

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI**

UNITED STATES OF AMERICA

V.

NO. 4:22-CR-121

FREDERICK LARRY

ORDER

On October 17, 2022, the government, pursuant to Federal Rule of Criminal Procedure 48(a), moved for leave to dismiss with prejudice the indictment against Frederick Larry. Doc. #27. As cause, the government represents that the indictment charging Larry with “aiding and abetting a drug distribution” is based on a confidential source identifying Larry as the purchaser of methamphetamine but that it “received and later confirmed information that the individual identified as Frederick Larry at the purchase location was rather his brother, Willie Larry.” *Id.* at 1.

Rule 48(a) of the Federal Rules of Criminal Procedure provides that “[t]he government may, with leave of court, dismiss an indictment, information, or complaint. The government may not dismiss the prosecution during trial without the defendant’s consent.” “This ‘leave of court’ requirement has been interpreted to allow the courts to exercise discretion over the propriety of a prosecutorial motion to dismiss.” *United States v. Jones*, 664 F.3d 966, 973 (5th Cir. 2011) (internal quotation marks omitted). However, this discretion must be exercised with a view to the rule’s purpose—“to protect the defendant against prosecutorial harassment.” *Id.*

As a general rule, a motion for leave to dismiss “should be granted unless the trial court has an affirmative reason to believe that the dismissal motion was motivated by considerations contrary to the public interest.” *United States v. Salinas*, 693 F.2d 348, 352 (5th Cir. 1982)

(internal quotation marks omitted). “Although the burden of proof is not on the prosecutor to prove that dismissal is in the public interest, the prosecutor is under an obligation to supply sufficient reasons – reasons that constitute more than a mere conclusory interest.” *Id.* (cleaned up).

Here, the government’s proffered reason for dismissal—mistaken identity—is sufficient. Accordingly, the motion for leave to dismiss [27] is **GRANTED**. The charges in the indictment against Larry are **DISMISSED with prejudice**.

SO ORDERED, this 18th day of October, 2022.

/s/Debra M. Brown
UNITED STATES DISTRICT JUDGE